

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

D'JANGO HENDRIX,

Petitioner,

: Case No. 1:17-cv-623

- vs -

District Judge Douglas R. Cole
Magistrate Judge Michael R. Merz

WARDEN, Lebanon Correctional
Institution,

:

Respondent.

DECISION AND ORDER

This habeas corpus action is before the Court on Petitioner's filings of April 5, 2023, comprising 816 pages, but not including Petitioner's Traverse, which remains due April 7, 2023. These new filings are dealt with seriatim below.

Amended Petition

Because Petitioner had neither permission from the Court nor consent of the Respondent, his Amended Petition (ECF No. 77) was improperly filed and it is STRICKEN.

Motion for Leave to Amend

Petitioner has moved for leave to file an Amended Petition (ECF No. 74). Respondent's time to oppose the Motion is set at April 26, 2023, by S. D. Ohio Civ. R. 7.2. Consideration of the merits of the Motion to Amend is postponed pending response by the Respondent.

Objections

Petitioner has filed Objections (ECF No. 73) under Fed.R.Civ.P. 72(a) to the Magistrate Judge's Decision and Order of March 31, 2023 (ECF No. 72). Objections under that Rule are reserved for the assigned District Judge.

Reconsideration and Stay

In addition to objecting to the March 31, 2023, Decision and Order, Petitioner has moved for its reconsideration or stay (ECF No. 76). The Magistrate Judge has read this Motion and finds that it discloses facts not previously revealed, particularly the involvement of Drs. Brent Turvey and Frank Miller in this case. Why their involvement and the time necessary to facilitate that involvement were not revealed in previous motions for extension of time is unexplained. Taken together, the information in the Motion does not persuade the Magistrate Judge to reconsider the March 31, 2023, Order or to stay its effectiveness. Petitioner has already objected to Judge Cole on the content of the Order and can approach him as well to stay its effectiveness.

Motion to Expand the Record

Finally, Petitioner has moved to expand the record under Rule 7 of the Rules Governing § 2254 Cases by adding those documents attached as exhibits to his Motion for Leave to Amend (ECF No. 75, PageID 2138). Here again, as with the Motion to Amend, S. D. Ohio Civ. R. 7.2 allows Respondent until April 26, 2023. Consideration of the merits of this Motion will be postponed pending Respondent's opportunity to reply.

Petitioner labels the instant motion as his First Motion to Expand the Record. *Id.* at PageID 2139. It is not his first. Rather, on October 27, 2020, he filed his first motion to expand the record (ECF No. 27). On August 10, 2021, Magistrate Judge Stephanie Bowman, to whom this case was then referred, recommended that the stay of proceedings pending the outcome of state court post-conviction process (sought by Hendrix) be granted and the motion to expand be denied without prejudice to re-filing after the case was reopened (ECF No. 36). No objections were filed and Judge Black adopted the recommendations on August 31, 2021 (ECF No. 37). Hendrix notified this Court on April 12, 2022, that the Ohio Supreme Court had rejected his appeal on February 14, 2022 (ECF No. 38). Hendrix waited from then until April 5, 2023, to file his instant Motion to Expand the Record. That delay and the several years delay in filing a traverse is relevant to the Motion to Expand.

April 6, 2023.

s/ Michael R. Merz
United States Magistrate Judge